IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 3772 of 2006
With
CIVIL APPLICATION No. 11491 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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THE NEW INDIA ASSURANCE CO. LTD. - Appellant(s)
Versus
ZARINABEN SALIMBHAI BALIM & 3 - Defendant(s)

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Appearance :
MR SUNIL B PARIKH for Appellant(s) : 1,
MR DEVANG VYAS for Defendant(s) : 1,1.2.1
None for Defendant(s) : 1.2.2, 1.2.3, 1.2.4,1.2.5 - 4.

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 10/01/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE AKIL KURESHI)

Though the First Appeal was admitted and Civil Application has been placed before this Court for confirmation of ad-interim relief granted earlier, learned advocates appearing for the parties submitted that the appeal itself can be taken up for final hearing. Accordingly we have heard the learned advocates appearing for the parties on the First Appeal itself.

2. This appeal arises out of a judgment and award dated 4th January 2006 passed by the Motor Accident Claims Tribunal (Aux.), Fast Track Court, Rajkot in MACP No.1243 of 2004.

3. In a vehicular accident which took place on 25.9.2004, one Shri Salimbhai Karimbhai received fatal injuries. His heirs including his widow and four minor children, therefore, filed the above-numbered claim petition seeking compensation of Rs.8 lacs from the driver, owner and insurer of the vehicle involved in the accident i.e. truck No.GJ-12-U-8830.

4. From the available material on record, the Claims Tribunal held that the driver of the truck was negligent to the extent of 85 per cent in causing the accident and 15 per cent negligence was attributed to the deceased who himself was driving a motor-cycle.

5. With respect to the quantum of compensation, the

Tribunal came to the conclusion that the monthly income of the deceased was Rs.2500/-. The Tribunal, therefore, assessed a sum of Rs.3750/- per month as the prospective income of the deceased. Considering the fact that including the deceased, there were 6 members in the family and the claimants included a young widow and four minor children, the Tribunal, in the facts of the case, found it appropriate to reduce one-sixth of the monthly income of the deceased for his personal expenses. The Tribunal thus found that the loss of dependency benefits for the family would be Rs.3125/- per month. Considering the age of the deceased being 37 years on the date of the accident, the Tribunal adopted multiplier of 16. The Tribunal, thus worked out the dependency benefits for the family at Rs.6,00,000/- (Rs.3125 x 12 x 16). 15 per cent (Rs.90,000) was thereafter deducted on account of the negligence attributable to the deceased himself and the figure of Rs.5,10,000/- was arrived at as the loss of dependency benefits to the claimants. To the said amount, the Tribunal added a sum of Rs.1,25,000/- under the head of loss to the estate and Rs.10,000/- for funeral expenses. Eventually, the Tribunal passed an award of Rs.6,45,000/-.

6. Before this Court, learned advocate for the appellant mainly contended that the Tribunal gravely erred in awarding a sum of Rs.1,25,000/- under the head of loss to estate. He submitted that the said amount is highly excessive. He also pointed out that

the Tribunal had no basis for awarding a sum as high as Rs.10,000/- for funeral expenses. He also submitted that assessment of income was also on the higher side and that the deceased was also equally negligent in causing the accident.

7. On the other hand, learned advocate Shri Devang Vyas appearing for the claimants under instructions stated that the claimants would be satisfied if the amount under the head of loss to the estate is reduced to Rs.20,000/- and award for funeral expenses is reduced to Rs.5,000/-.

8. Having heard the learned advocates appearing for the parties, we find no infirmity with the conclusion regarding apportionment of negligence. With respect to assessment of income of the deceased and assessment of dependency benefits to the family also, we see no reason to interfere with. However, we are in agreement with the learned advocate for the appellant that the Tribunal erred in awarding a sum as high as Rs.1,25,000/- under the head of loss to the estate. The amount of Rs.10,000/- awarded for funeral expenses also is apparently on the higher side since there was no material to grant Rs.10,000/- under that head.

9. Considering the submissions made and considering the concession of the learned advocate for the claimants, we are inclined to reduce the said amounts to Rs.20,000/- and Rs.5,000/- respectively.

10. In the result, computation of compensation would be as follows:-

Rs.5,10,000/-	For loss of dependency benefits.
Rs. 20,000/-	Towards loss to the estate.
Rs. 5,000/-	For funeral expenses.
Rs.5,35,000/-.	

In the result, the claimants will receive a sum of Rs.5,35,000/- with proportionate costs and interest. The award is modified accordingly. The appeal is partly allowed.

11. In view of the above modifications, the appellant shall be entitled to receive refund of Rs.1,10,000/- with proportionate costs and interest from the amount deposited before the Claims Tribunal. The said amount shall be refunded to the appellant Insurance Company within a period of four weeks from the date of receipt of a copy of this order.

With these directions, the appeal as well as Civil Application are disposed of as above.

(M.S.Shah, J.)

(Akil Kureshi,J.)

(vjn)